illicit intercourse but the prior pregnancy and concealment concerning which the deceived party is innocent. *Winner* v. *Winner,* 171 Wis. 413; *Lyman* v. *Lyman,* 90 Conn. 399. In *Foss* v. *Foss,* 12 Allen (Mass.) 26, where the parties had sexual intercourse at their second or third meeting and were married a short time later, relief was denied the husband. The court held that his predicament was the result of his own "blind credulity" and that his antenuptial relations with his wife and her condition were sufficient to put a reasonable man on inquiry, necessitating some sort of investigation on his part into the truth of her representations. *Safford* v. *Safford,* 224 Mass. 392. See also, *Franke* v. *Franke,* (Cal.), 31 Pac. 571. In *Winner* v. *Winner, supra,* the court annulled the marriage and though disapproving of the Massachusetts rule above, it distinguished the case on the ground that because of their long comradeship and their engagement, the plaintiff acted reasonably in relying on the representations of the defendant. The more recent cases grant relief to the husband and reject the Massachusetts rule because of a belief that it punishes too severely the wrongdoer who is making a praiseworthy attempt at retribution. *Lyman* v. *Lyman,* (1916) 90 Conn. 399; *Ritayik* v. *Ritayik,* (1919) 202 Mo. App. 74; *Wallace* v. *Wallace,* (1908) 137 Ia. 37, (involving a statute); *Gard* v. *Gard,* (1918) 204 Mich. 255, where the defendant had informed the plaintiff of her intercourse with another. See 18 L. R. A. 375; L. R. A. 1916 E 643, 650; 11 A. L. R. 931.

MUNICIPAL ZONING—EXCLUSION OF GASOLINE FILLING STATION FROM RESIDENTIAL DISTRICT.—A statute authorized cities of the first class to establish restricted residential districts and to provide that no buildings except residences, schoolhouses and churches should be erected within such districts without first securing a permit from the city council, such permit to be issued under such reasonable rules and regulations as the city council might provide. An ordinance of the city of Des Moines created such a district. Defendant sought a permit to erect a gasoline filling station within said district, and when it was refused proceeded to erect it without permission. The city sued to enjoin him. It appeared that the corner where the station was to be erected was an intersection from which five streets radiated, that one corner was occupied by a park which was frequented by small children, and that another corner was occupied by a church. Plaintiff contended that the station would increase congestion of vehicles, would accentuate the noise and confusion of ordinary street traffic to the disturbance of the inhabitants and the church, that the disagreeable odors of gasoline would pervade the neighborhood, that the drip of oil would befoul the streets, and that, in general, the said business would be detrimental to the health, comfort, and general welfare of the people making their homes in the district, and would constitute a nuisance. Defendant denied that its business would constitute a nuisance and contended that the refusal of the permit was unconstitutional. *Held,* the refusal was a valid exercise of police power and defendant was enjoined from erecting his filling station. *City of Des Moines* v. *Manhattan Oil Co.,* (Ia. 1921) 184 N. W. 823.

The question in the case was whether or not the regulations under

which the defendant had been refused the permit were valid. This refusal would be a deprivation of property within the meaning of the Fourteenth amendment unless it could be justified as a valid exercise of the police power of the state. Is the police power of such scope as to warrant such restrictions on property owners in residential districts? That it may be invoked to confine certain occupations to restricted districts when such regulation may be necessary to protect the health, morals, and safety of the public is well settled. *Reinman* v. *City of Little Rock,* 237 U. S. 171. It may be extended to control matters relating to general prosperity not included by health, morals, and safety. *C. B. & Q. Ry.* v. *Drainage Comm'rs,* 200 U. S. 561, 592. In *dicta,* at least, it has been extended to public comfort although it is probable that that term has been used synonymously with "health." *Ex parte Quong Wo,* 161 Cal. 220. But it has been held that the police power will not justify the withholding of a building permit merely because the proposed building is not of as good quality as the others in the neighborhood or because its erection would decrease property values. *Bostock* v. *Sams,* 95 Md. 400. Nor have the aesthetic tastes of the neighborhood been considered sufficient to warrant the restriction of use of property. *City of Passaic* v. *Paterson Bill Posting Co.,* 72 N. J. L. 285. In that case the court said, "Aesthetic considerations are matters of luxury and indulgence rather than of necessity and it is necessity alone which justifies the exercise of the police power."

However, there are indications in recent decisions that aesthetic considerations may at least be weighed in the balance along with other subjects which are admittedly within the scope of the police power, *Welch* v. *Swasey,* 193 Mass. 364, 214 U. S. 91, and it is altogether probable that their weight is increasing as time goes on. Somewhere in the range between public safety and public pleasure there is a dividing line which is apparently shifting down the scale in such a way as to increase the scope of the police power, and the gasoline filling station would seem to come extremely close to this line as it is established today. It has been held that the use of property in residential districts for garage purposes may be prohibited. *People ex rel. Keller* v. *Oak Park,* 266 Ill. 365. On the other hand prohibiting a small store building has been held invalid. *State ex rel. Lachtman* v. *Houghton,* 134 Minn. 226. The Iowa court in the principal case has placed the filling station in the former class. It is impossible to determine from the decision whether it did so because it considered such a station inimical to public health and safety, or because it was expanding the scope of the police power to include the hitherto immaterial considerations of aesthetic tastes and decrease of property values. As to the former possibility, it would seem that noise during church services and odors of gasoline could hardly be called unhealthful, however unpleasant they may be. Nor does the traffic congestion argument seem particularly cogent in justification of it as a public safety measure. The decision may well be regarded as considerable expansion of police power to justify residential zone laws. For a summary of recent cases on the subject see 19 MICH. L. REV. 191.